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10/612,035	07/01/2003	Steven R. Levine	30412/30002A	5843
7590	12/07/2006			EXAMINER COHEN, AMY R
Roger A. Heppermann MARSHALL, GERSTEIN & BORUN LLP 233 South Wacker Drive Sears Tower, Suite 6300 Chicago, IL 60606-6357			ART UNIT 2859	PAPER NUMBER

DATE MAILED: 12/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/612,035	LEVINE, STEVEN R.
	Examiner	Art Unit
	Amy R. Cohen	2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on RCE 9/21/2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4-7,9-28,30,31 and 34-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,4-7,9-28,30,31 and 34-64 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 April 2005 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Objections

1. Claims 1, 13, 24 are objected to because of the following informalities:

Claim 1 is objected to since line 9, "wherein the light generating device or leveling device is removably mounted", claim language appears to positively claim a light generating device or leveling device. However, the preamble is directed to a base for a light generating device or a leveling device, which implies intended use of the base. For purposes of prosecution, Examiner interprets the claim language to indicate the combination of the base and a light generating device or a leveling device, since it appears that Applicant is positively claiming the light generating device or leveling device within the body of the claim.

Claim 13, line 2 "a base" should read the base to be consistent in claim language since the claim has been amended to read "the light generating device" in line 7.

Claim 24, line 2 "a base" should read the base to be consistent in claim language since the claim has been amended to read "the light generating device" in line 7.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 5-7, 13, 14, 20, 22, 24, 27, 31, 35, 36, 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Wright et al. (U. S. Patent No. 6,249,983).

Regarding claims 1, 5-7: Wright et al. teaches a base (10) for a light generating device or a leveling device comprising: a first portion (47) having a planar surface (Fig. 25, 111 creates the planar surface, 117 denotes the plane of the surface) and a concave recess (107) in the planar surface; and a second portion (49) attached to the first portion, the second portion having a nonmechanical attachment structure (29) opposite the first portion (Fig. 1), wherein the light generating device (11) or leveling device (11) is removably mounted to the first portion along the planar surface (Figs. 25-30, Col 9, lines 6-32) and the first portion is both pivotable and rotatable relative to the second portion (Figs. 3-7, 27 and 28, Col 2, line 65-Col 3, line 14, Col 8, line 65-Col 9, line 5).

Wright et al. teaches the base wherein the first portion includes an outwardly curved surface (83) opposite the planar surface (Figs. 25, 27, 28) and the second portion includes an inwardly curved surface (85) opposite the nonmechanical attachment structure (Figs. 27-29), the outwardly curved surface being received by the inwardly curved surface (Figs. 27 and 28).

Wright et al. teaches the base wherein the outwardly curved surface is swivelably mounted to the inwardly curved surface (Figs. 27 and 28, Col 2, line 65-Col 3, line 14, Col 8, line 65-Col 9, line 5).

Wright et al. teaches the base wherein the laser generating device or leveling device is removably mounted to the first portion by one of a magnet, a magnetically attractive material, a hook fastener, a loop fastener, a tab, a slot, a flat surface (at 107, the flat surface receives stud 105 which is connected to the laser leveling device 11, Col 9, lines 6-13), and a latch.

Regarding claims 13, 14, 20, 22: Wright et al. teaches a light generating device (11) with a base, comprising: a base (10) comprising: a first portion (47) having a planar surface (Fig. 25, 111 creates the planar surface, 117 denotes the plane of the surface) that includes a concave recess (107) in the planar surface; and a second portion (49) attached to the first portion, the

second portion having a nonmechanical attachment structure (29) opposite the first portion (Fig. 1); and the light generating device (11) being removably mounted to the first portion along the planar surface (Figs. 25-30, Col 9, lines 6-32), wherein the first portion is both pivotable and rotatable relative to the second portion (Figs. 3-7, 27 and 28, Col 2, line 65-Col 3, line 14, Col 8, line 65-Col 9, line 5).

Wright et al. teaches the device wherein the light generating device generates a laser beam (27, Col 6, lines 20-26).

Wright et al. teaches the device wherein the laser generating device is removably mounted to the first portion by one of a hook fastener, a loop fastener, a tab, a slot, a flat surface (107, the flat surface receives stud 105 which is connected to the laser leveling device 11, Col 9, lines 6-13), and a latch.

Wright et al. teaches the device wherein the first portion includes a latch (91, 93, 95, Figs. 21-23, Col 8, lines 48-64).

Regarding claims 24 and 27: Wright et al. teaches a leveling device (11) with a base, comprising: a base (10) comprising: a first portion (47) having a planar surface (Fig. 25, 111 creates the planar surface, 117 denotes the plane of the surface) that includes a concave recess (107) in the planar surface; and a second portion (49) attached to the first portion, the second portion having a nonmechanical attachment structure (29) opposite the first portion (Fig. 1); and the leveling device (11) being removably mounted to the first portion along the planar surface (Figs. 25-30, Col 9, lines 6-32), wherein the first portion is both pivotable and rotatable relative to the second portion (Figs. 3-7, 27 and 28, Col 2, line 65-Col 3, line 14, Col 8, line 65-Col 9, line 5).

Wright et al. teaches the device wherein the leveling device is removably mounted to the first portion by one of a magnet, a magnetically attractive material, a hook fastener, a loop

fastener, a tab, a slot, a flat surface (at 107, the flat surface receives stud 105 which is connected to the laser leveling device 11, Col 9, lines 6-13), and a latch.

Regarding claims 31, 35, 36, 41: Wright et al. teaches a movable base (10) for a light generating device (11) or a leveling device (11), comprising: a first portion (47) having a planar surface (Fig. 25, 111 creates the planar surface, 117 denotes the plane of the surface) that includes a concave recess (107) in the planar surface, the planar surface removably receiving and mounting either a light generating device or a leveling device thereto (Figs. 25-30, Col 9, lines 6-32); a second portion (49) mounted to the first portion, the second portion having a nonmechanical attachment structure (29) opposite the first portion (Fig. 1); wherein the second portion is attached to the first portion opposite the light generating device or leveling device and the first portion is both pivotable and rotatable relative to the second portion (Figs. 3-7, 27 and 28, Col 2, line 65-Col 3, line 14, Col 8, line 65-Col 9, line 5).

Wright et al. teaches the base wherein the first portion includes a curved inner surface and the second portion includes a curved outer surface that receives the curved inner surface of the first portion when the first and second portions are attached to one another (Figs. 25, 27-29, the curved inner surface of 47 (103) is received by the curved outer surface of 49 (101), specifically shown in Figs. 23, 27 and 28 when 47 and 49 are connected via 83 and 85, Col 8, line 65-Col 9, line 5).

Wright et al. teaches the base comprising a retainer (85) and a fastener (83) for joining the first and second portions (Figs. 25, 27-29, Col 9, lines 54-62).

Wright et al. teaches the device wherein the first portion includes one of a magnet, a magnetically attractive material, a hook fastener, a loop fastener, a tab, a slot, a flat surface (at 107, the flat surface receives stud 105 which is connected to the laser leveling device 11, Col 9, lines 6-13), a recess (107) and a latch.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. in view of Ebner et al. (U. S. Patent No. 4,068,961).

Wright et al. discloses the base as described above in paragraph 3.

Wright et al. does not disclose the base comprising a retainer having a flat surface and a convex surface opposite the flat surface, the retainer being disposed in the concave recess with the convex recess adjacent the concave recess.

Ebner et al. discloses a base (Fig. 1) a first portion (19) having a planar surface (22, 24, Fig. 1, Col 2, lines 66-67) and a concave recess (27) in the planar surface (Fig. 1); and a second portion (21) attached to the first portion, the second portion having a nonmechanical attachment structure (43) opposite the first portion (Fig. 1), an object is removably mounted to the first portion along the planar surface (Col 1, lines 28-57) and the first portion is both pivotable and rotatable relative to the second portion (Col 1, lines 28-51, Col 2, lines 9-23); wherein the base comprises a retainer (18) having a flat surface (17) and a convex surface (45) opposite the flat surface (Fig. 2, Col 2, lines 35-59), the retainer being disposed in the concave recess with the convex recess adjacent the concave recess (Fig. 1, Col 2, lines 35-59).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the base of Wright et al. be connected by a retainer, as taught by Ebner et al.,

since the bases are alternative means of providing pivotable and rotatable connections which, if replaced, produce neither non-obvious nor unexpected results.

6. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jan et al. (U. S. Patent No. 6,195,902).

Wright et al. discloses the device as described above in paragraph 3 and wherein the light generating device comprises a housing (11) with at least one flat surface (Fig. 1).

Wright et al. does not disclose device wherein the light generating device generates the laser beam with an asymmetric intensity; wherein the light generating device generates the light in the shape of a fan; wherein the fan substantially lies within a second plane that intersects a plane defined by the at least one flat surface at an angle.

Jan et al. discloses a light generating device comprising a housing (10) with at least one flat surface (112); wherein the light generating device generates the laser beam with an asymmetric intensity (Fig. 3, Col 4, lines 40-57); wherein the light generating device generates the light in the shape of a fan (Fig. 3, Col 4, lines 40-57); wherein the fan substantially lies within a second plane that intersects a plane defined by the at least one flat surface at an angle (Fig. 3, Col 4, lines 40-57).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the laser generator in the laser alignment device of Wright et al. extend at an angle relative to the reference surface, as taught by Jan et al., so that a user could accurately extend a reference line on both a horizontal and/or vertical surface, creating greater accuracy in aligning object along a reference plane (Jan et al., Col 1, lines 45-61).

7: Claims 2, 9-12, 19, 26, 37-40, 42-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. in view of Schwandt (U. S. Patent No. 5,063,679) and in view of Sheridan et al. (U. S. Patent No. 6,569,521).

Regarding claims 2, 9-12, 19, 26, 37-40: Wright et al. discloses the device as described above in paragraph 3.

Wright et al. does not disclose the device wherein the nonmechanical attachment structure comprises an adhesive; wherein the adhesive protrudes for the second portion; wherein the adhesive comprises a liner; wherein the adhesive is a removable pressure sensitive adhesive comprising: an inner portion attached to the second portion and an outer portion releasably attached to the inner portion; comprising a second adhesive.

Schwandt discloses a device (10) comprising a base comprising a first portion (12) and a second portion (32) wherein the first portion is both pivotable and rotatable relative to the second portion (Col 3, line 61-Col 4, line 13, Col 4, lines 58-67); wherein the nonmechanical attachment structure comprises an adhesive (63); wherein the adhesive comprises a liner (although not clearly indicates, the use of a liner is implied since the use of liners with adhesives, which is removed just prior to attachment, helps to avoid drying of the adhesive); wherein the adhesive is a removable pressure sensitive adhesive comprising: an inner portion attached to the second portion and an outer portion releasably attached to the inner portion (Fig. 11, Col 5, lines 35-39, the adhesive is pressed onto the surface the base is mounted to, this is a temporary mounting, not intended to be permanent, Col 5, line 65-Col 6, line 2).

Sheridan et al. discloses a nonmechanical attachment structure (100, Figs. 6 and 7) comprises an adhesive (114); wherein the adhesive protrudes for the second portion (Fig. 7, and 126); wherein the adhesive comprises a liner (118, 120); wherein the adhesive is a removable pressure sensitive adhesive comprising: an inner portion attached to the second portion and an outer portion releasably attached to the inner portion (Figs. 6 and 7, Col 14, lines 7-51, specifically, lines 35-51); comprising a second adhesive (116).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a removable pressure sensitive adhesive comprising a liner to the device of Wright et al., as taught by Sheridan et al., since Schwandt teaches mounting bases to surfaces using adhesives in order to form a more secure attachment of the base to a surface.

Regarding claims 42-44: Wright et al. discloses a method of aligning objects on a surface, the method comprising: inserting a light generating device (11) into a movable base (10) (Figs. 1-4, Col 6, lines 10-25), the movable base including a first portion (47) having a planar surface that includes a concave recess (Fig. 25, 111 creates the planar surface, 117 denotes the plane of the surface, recess 107), the light generating device being removably mounted to the first portion along the planar surface (Col 9, lines 6-13), the movable base including a second portion (49) that includes a nonmechanical attachment structure (29) opposite the first portion, the second portion pivotably and rotatably mounted to the first portion (Figs. 25, 27-29, Col 8, line 65-Col 9, line 5); attaching the light generating device and movable base to a surface (Fig. 4, Col 6, lines 26-42); orienting the light generating device in at least one plane using at least one bubble level (13, 15) and a movable feature on the light generating device (Fig. 1, Col 6, lines 26-51); and aligning at least one object on the surface (Figs. 2 and 4, Col 6, lines 26-42).

Wright et al. does not disclose the method wherein the light generating device and movable base are attached to a wall surface with an adhesive; wherein aligning the at least one object includes aligning the at least one object on the wall; wherein the adhesive is a removable pressure sensitive adhesive; comprising removing the light generating device and movable base from the wall surface and discarding the adhesive.

Schwandt discloses a device (10) and method comprising a base comprising a first portion (12) and a second portion (32) wherein the second portion is pivotable and rotatable relative to the first portion (Col 3, line 61-Col 4, line 13, Col 4, lines 58-67); wherein the

nonmechanical attachment structure comprises an adhesive (63); wherein the adhesive is a removable pressure sensitive adhesive (Fig. 11, Col 5, lines 35-39, the adhesive is pressed onto the surface the base is mounted to, this is a temporary mounting, not intended to be permanent, Col 5, line 65-Col 6, line 2).

Sheridan et al. discloses a nonmechanical attachment structure (100, Figs. 6 and 7) comprises an adhesive (114); wherein the adhesive attaches an object to a wall surface (Col 13, lines 26-56, Col 14, lines 22-51); wherein the adhesive is a removable pressure sensitive adhesive (Figs. 6 and 7, Col 14, lines 7-51, specifically, lines 35-51); comprising removing a device from the wall surface and discarding the adhesive (Col 13, lines 26-56, Col 14, lines 22-51, wherein once the adhesive is removed from the surface and from the object being attached, the adhesive would be discarded).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a removable pressure sensitive adhesive comprising a liner to the device and method of Wright et al., as taught by Sheridan et al., since Schwandt teaches mounting bases to surfaces using adhesives in order to form a more secure attachment of the base to a surface.

Regarding claims 45-47: Wright et al. discloses a method of aligning objects on a surface, the method comprising: inserting a leveling device (11) into a movable base (10) (Figs. 1-4, Col 6, lines 10-25), the movable base including a first portion (47) having a planar surface that includes a concave recess (Fig. 25, 111 creates the planar surface, 117 denotes the plane of the surface, recess 107), the leveling device being removably mounted to the first portion along the planar surface (Col 9, lines 6-13), the movable base including a second portion (49) that includes a nonmechanical attachment structure (29) opposite the first portion, the second portion pivotably and rotatably mounted to the first portion (Figs. 25, 27-29, Col 8, line 65-Col 9, line 5); attaching the leveling device and movable base to a surface (Fig. 4, Col 6, lines 26-42); orienting

the leveling device in at least one plane using at least one bubble level (13, 15) and a movable feature on the leveling device (Fig. 1, Col 6, lines 26-51); and aligning at least one object on the surface (Figs. 2 and 4, Col 6, lines 26-42).

Wright et al. does not disclose the method wherein the light generating device and movable base are attached to a wall surface with an adhesive; wherein aligning the at least one object includes aligning the at least one object on the wall; wherein the adhesive is a removable pressure sensitive adhesive; comprising removing the light generating device and movable base from the wall surface and discarding the adhesive.

Schwandt discloses a device (10) and method comprising a base comprising a first portion (12) and a second portion (32) wherein the second portion is pivotable and rotatable relative to the first portion (Col 3, line 61-Col 4, line 13, Col 4, lines 58-67); wherein the nonmechanical attachment structure comprises an adhesive (63); wherein the adhesive is a removable pressure sensitive adhesive (Fig. 11, Col 5, lines 35-39, the adhesive is pressed onto the surface the base is mounted to, this is a temporary mounting, not intended to be permanent, Col 5, line 65-Col 6, line 2).

Sheridan et al. discloses a nonmechanical attachment structure (100, Figs. 6 and 7) comprises an adhesive (114); wherein the adhesive attaches an object to a wall surface (Col 13, lines 26-56, Col 14, lines 22-51); wherein the adhesive is a removable pressure sensitive adhesive (Figs. 6 and 7, Col 14, lines 7-51, specifically, lines 35-51); comprising removing a device from the wall surface and discarding the adhesive (Col 13, lines 26-56, Col 14, lines 22-51, wherein once the adhesive is removed from the surface and from the object being attached, the adhesive would be discarded).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a removable pressure sensitive adhesive comprising a liner to the device

and method of Wright et al., as taught by Sheridan et al., since Schwandt teaches mounting bases to surfaces using adhesives in order to form a more secure attachment of the base to a surface.

8. Claims 18 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. in view of Butler (U. S. Patent No. 1,153,760).

Wright et al. discloses the device as described above in paragraph 3.

Wright et al. does not disclose the device wherein the laser generating device or the leveling device comprises a retractable pin and an actuator for the pin.

Butler discloses a leveling device (4) comprising a retractable pin (14) and an actuator (top of 9) for the pin (Figs. 1-3, Col 1, line 53-Col 2, line 75).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a retractable pin and actuator to the device of Wright et al., as taught by Butler, in order to releasably secure the device itself to an object such as a post or wall, or other penetratable object (Butler, Col 1, lines 9-24).

9. Claims 21, 23, 28, 30, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. in view of Wu et al. (U. S. Patent No. 5,983,510).

Wright et al. discloses the device as described above in paragraph 3.

Wright et al. does not disclose the device wherein the device includes a latch; wherein the first portion includes a magnet or a material that is magnetically attractive to a magnet; wherein the first portion includes a magnet or a material that is magnetically attracted to the light generating device or leveling device being mounted to the first portion.

Wu et al. discloses device wherein the device includes a latch (27, 271); a base (top of 1, Fig. 1) for a light generating device (2) or leveling device (2), comprising: a first portion (14) having a planar surface (Col 2, lines 1-15); and a second portion (11) attached to the first portion, the second portion having a nonmechanical attachment structure opposite the first portion (Col 2,

lines 1-15); wherein the light generating device or leveling device is removably mounted to the first portion along the planar surface (Col 2, lines 1-15) and the first portion is both rotatable and pivotable relative to the second portion (Col 2, lines 1-15); wherein the first portion includes a magnet or a material that is magnetically attractive to a magnet (Col 2, lines 1-15); wherein the first portion includes a magnet or a material that is magnetically attracted to the light generating device or leveling device being mounted to the first portion (Col 2, lines 1-38).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a latch and to have the first portion include a magnet or magnetically attractive material in the device of Wright et al., as taught by Wu et al., so that the bubble level could be angularly adjusted and/or removed for replacement (Wu et al., Col 3, lines 11-35) and in order to ensure a secure attraction between the laser generating device or leveling device and the first portion of the base, even if the first portion of the base is pivoted from the horizontal position by a large angle.

10. Claims 48, 49, 55, 59, 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. in view of Whicker, Jr. (U. S. Patent No. 5,832,867).

Wright et al. discloses the device as described above in paragraph 3.

Wright et al. does not disclose the device comprising a kit comprising a container defining a volume of space, wherein the base is positioned within the volume of space, wherein the light generating device or leveling device is positioned within the volume of space so as to be unattached to the base.

Whicker, Jr. discloses a kit comprising a container (26) defining a volume of space, wherein each component of a device contained within the container is unattached to each other component contained within the container (Figs. 7, 8, 10, 11, Col 5, lines 8-39, Col 6, lines 4-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a kit comprising a container, wherein the components of the device are contained within the container to the device of Wright et al., as taught by Whicker, Jr., so that a user would have a convenient way to transport all of the components from one place to another (Whicker, Jr., Col 5, lines 8-39) without loss or damage to each component of the device.

11. Claims 48-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. in view of Jan et al. as applied to claims 1, 5-7, 13-17, 20, 24, 27, 31, 35, 36, 41 above, and further in view of Whicker, Jr.

Wright et al. and Jan et al. disclose the device as described above in paragraph 6.

Wright et al. and Jan et al. do not disclose the device comprising a kit comprising a container defining a volume of space, wherein the base is positioned within the volume of space, wherein the light generating device or leveling device is positioned within the volume of space so as to be unattached to the base.

Whicker, Jr. discloses a kit comprising a container (26) defining a volume of space, wherein each component of a device contained within the container is unattached to each other component contained within the container (Figs. 7, 8, 10, 11, Col 5, lines 8-39, Col 6, lines 4-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a kit comprising a container, wherein the components of the device are contained within the container to the device of Wright et al. and Jan et al., as taught by Whicker, Jr., so that a user would have a convenient way to transport all of the components from one place to another (Whicker, Jr., Col 5, lines 8-39) without loss or damage to each component of the device.

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12. Claims 48, 53, 59 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. and Butler as applied to claims 1, 5-7, 13, 14, 18, 20, 24, 25, 27, 31, 35, 36, 41 above, and further in view of Whicker, Jr.

Wright et al. and Butler disclose the device as described above in paragraph 8.

Wright et al. and Butler do not disclose the device comprising a kit comprising a container defining a volume of space, wherein the base is positioned within the volume of space, wherein the light generating device or leveling device is positioned within the volume of space so as to be unattached to the base.

Whicker, Jr. discloses a kit comprising a container (26) defining a volume of space, wherein each component of a device contained within the container is unattached to each other component contained within the container (Figs. 7, 8, 10, 11, Col 5, lines 8-39, Col 6, lines 4-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a kit comprising a container, wherein the components of the device are contained within the container to the device of Wright et al. and Butler, as taught by Whicker, Jr., so that a user would have a convenient way to transport all of the components from one place to another (Whicker, Jr., Col 5, lines 8-39) without loss or damage to each component of the device.

13. Claims 48, 54, 59, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. in view of Schwandt and in view of Whicker, Jr.

Wright et al. discloses the device as described above in paragraph 3.

Wright et al. does not disclose the device wherein the nonmechanical attachment structure is an adhesive.

Schwandt discloses a device (10) and method comprising a base comprising a first portion (12) and a second portion (32) wherein the second portion is pivotable and rotatable relative to the first portion (Col 3, line 61-Col 4, line 13, Col 4, lines 58-67); wherein the nonmechanical attachment structure comprises an adhesive (63).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the nonmechanical attachment structure be an adhesive in the device of Wright et al., as taught by Schwandt, since Schwandt teaches mounting bases to surfaces using adhesives as one of many equivalent and alternative methods of removably securing a base to a surface (Schwandt, Col 1, lines 35-41, Col 5, lines 19-39, Col 5, line 65-Col 6, line 2).

Wright et al. and Schwandt do not disclose the device comprising a kit comprising a container defining a volume of space, wherein the base is positioned within the volume of space, wherein the light generating device or leveling device is positioned within the volume of space so as to be unattached to the base.

Whicker, Jr. discloses a kit comprising a container (26) defining a volume of space, wherein each component of a device contained within the container is unattached to each other component contained within the container (Figs. 7, 8, 10, 11, Col 5, lines 8-39, Col 6, lines 4-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a kit comprising a container, wherein the components of the device are contained within the container to the device of Wright et al. and Schwandt, as taught by Whicker, Jr., so that a user would have a convenient way to transport all of the components from one place to another (Whicker, Jr., Col 5, lines 8-39) without loss or damage to each component of the device.

14. Claims 48, 57-59, 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. and Wu et al. as applied to claims 1, 5-7, 13, 14, 20, 21, 23, 24, 27, 28, 30, 31, 34, 35, 36, 41 above, and further in view of Whicker, Jr.

Wright et al. and Wu et al. disclose the device as described above in paragraph 9.

Wright et al. and Wu et al. do not disclose the device comprising a kit comprising a container defining a volume of space, wherein the base is positioned within the volume of space, wherein the light generating device or leveling device is positioned within the volume of space so as to be unattached to the base.

Whicker, Jr. discloses a kit comprising a container (26) defining a volume of space, wherein each component of a device contained within the container is unattached to each other component contained within the container (Figs. 7, 8, 10, 11, Col 5, lines 8-39, Col 6, lines 4-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a kit comprising a container, wherein the components of the device are contained within the container to the device of Wright et al. and Wu et al., as taught by Whicker, Jr., so that a user would have a convenient way to transport all of the components from one place to another (Whicker, Jr., Col 5, lines 8-39) without loss or damage to each component of the device.

15. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. and Whicker, Jr. as applied to claims 1, 5-7, 13, 14, 20, 24, 27, 31, 35, 36, 41, 48, 49, 55, 59, 62 above, and further in view of Waldron (U. S. Patent No. 4,829,676).

Wright et al. and Whicker, Jr. disclose the kit as described above in paragraph 10.

Wright et al. and Whicker, Jr. do not disclose the kit wherein the light generating device comprises a latch that engages the first portion.

Waldron discloses a leveling device (10) comprising a latch (20) to engage a structural member during alignment (Col 2, lines 43-55, Col 4, lines 51-66, Col 5, lines 43-51).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a latch to the kit and device of Wright et al. and Whicker, Jr., as taught by, Waldron, in order to ensure that the laser generating device is maintained in flush relationship (Waldron, Col 2, lines 43-55) with the first portion of the base, creating greater accuracy in measurement and/or alignment.

16. Claim 64 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. and Whicker, Jr. as applied to claims 1, 5-7, 13, 14, 20, 24, 27, 31, 35, 36, 41, 48, 49, 55, 59, 62 above, and further in view of Rando (U. S. Patent No. 6,009,630).

Wright et al. and Whicker, Jr. disclose the kit as described above in paragraph 10.

Wright et al. and Whicker, Jr. do not disclose the kit wherein the leveling device comprises an automatic leveler selected from the group consisting of a pendulum, a cantilevered tilt mechanism, an electronic leveler, and a shaft held between two journals.

Rando discloses a leveling device comprises an automatic leveler consisting of a pendulum (Col 4, line 58-Col 5, line 9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an automatic leveler to the kit and device of Wright et al. and Whicker, Jr., as taught by Rando, so that a user could choose to have the leveling device produce a precise level beam in order to ensure accurate measurements or placements of aligned objects (Rando, Col 1, line 65-Col 2, line 11, Col 2, lines 22-39).

Double Patenting

17. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

18. Claims 1, 2, 4-7, 9-28, 30, 31, 34-64 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12, 26-30, 32, 34-37, 39, 41-46 of copending Application No. 10/895800 in view of U. S. Patent No. 4,068,961. Application No. 10/895800 teaches a base for a light generating device comprising a first portion and a second portion attached to the first portion, the second portion having a non-mechanical attachment structure opposite the first portion, wherein the light generating device is removably mounted to the first portion and the first portion is both pivotable and rotatable relative to the second portion. Application No. 10/895800 does not disclose the first portion having a planar surface and a concave recess in the planar surface. U. S. Patent No. 4,068,961 discloses a base for a device having a first portion and a second portion wherein the first portion is both pivotable and rotatable relative to the second portion and having a planar surface and a concave recess in the planar surface. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a planar surface and a concave recess in the

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planar surface in the first portion of the base of Application 10/895800, as taught by U. S. Patent No. 4,068,961, in order to attach the first portion and the second portion of the base in a pivotable and rotatable manner without interfering with the mounting surface for the device.

This is a provisional obviousness-type double patenting rejection.

19. Claims 1, 2, 4-7, 9-28, 30, 31, 34-64 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 6-17 of copending Application No. 11/161474. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications are directed to bases for light generating devices, which have a first portion and a second portion, wherein the first portion is both pivotable and rotatable relative to the second portion.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

20. Applicant's arguments with respect to claims 1, 2, 4-7, 9-28, 30, 31, 34-64, entered with RCE on September 29, 2006 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents disclose laser generating devices or leveling devices Wu (U. S. Patent No. 7,055,252), Levine et al. (U. S. Patent No. 7,013,570), Li (U. S. Patent No. 6,782,034), Ho (U. S. Patent No. 5,966,826), and Baker et al. (U. S. Patent No. 3,959,888).

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22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R. Cohen whose telephone number is (571) 272-2238. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ARC
November 29, 2006



Amy R. Cohen
Patent Examiner
Tech Center 2800